

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

October 26, 2021 at 1:30 p.m.

1.	<u>21-23002</u> -C-13 <u>RDG</u> -1	LAWRENCE FUNG Eric Schwab	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 10-5-21 [<u>16</u>]
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Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 19.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 Meeting has not been concluded because the debtor failed to provide evidence confirming social security number.
2. The debtor admitted at the 341 meeting of creditors that he has not yet filed his 2020 Federal and State income tax returns.
3. The Plan provides for a plan payment of \$855.00 for 60 months, a 100% dividend to unsecured claims in the amount of \$7,341.00 and total priority claims of \$0. The Internal Revenue Service has filed a proof of claim with a priority amount of \$34,991.74 and a general unsecured amount of \$110,142.12, rendering the plan infeasible.
4. The trustee filed an Objection To Claim of Exemptions set for November 9, 2021, hearing.

DISCUSSION

The trustee's Objection is well-taken. The 341 Meeting has yet to be concluded because the debtor did not provide proof of social security number; the debtor has not filed his 2020 tax returns; the trustee has a pending objection to claimed exemptions; and priority and unsecured claims are far greater than scheduled, rendering the plan infeasible.

October 26, 2021 at 1:30 p.m.

Each of the above is an independent basis to deny confirmation. 11
U.S.C. §§ 1325(a)(1), (a)(4), (a)(6), (a)(9). Therefore, the Objection is
sustained.

The court shall issue a minute order substantially in the following form
holding that:

Findings of Fact and Conclusions of Law are stated in the
Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the
Chapter 13 Trustee, Russell Greer, having been presented to
the court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the October 26, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 30.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify Plan is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtor, Betty Veronica Gonzales, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 27) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

3. [21-22810](#)-C-13 EFRAIN RODRIGUEZ
[RDG](#)-1 Steele Lanphier

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-22-21 [[16](#)]

Thru #4

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 19.

The Objection is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor has not provided his 2020 tax returns.
2. The debtor has not provided all required pay advices.
3. The 341 Meeting of Creditors has not yet been concluded.
4. Trustee has objected to debtor's exemptions, which Objection is set for hearing October 26, 2021. If the trustee's Objection is sustained, the debtor's plan does not meet the liquidation test of 11 U.S.C. § 1325(a)(4).

DISCUSSION

A review of the docket shows the 341 Meeting has now been concluded. But, the trustee's Objection (Dkt. 20) as to the debtor's exemption has been sustained by final ruling, meaning the plan does not meet the liquidation test of 11 U.S.C. § 1325(a)(4).

While it is unclear if the debtor has provided his 2020 tax returns and all required pay advices, the aforementioned is an independent basis to deny confirmation.

Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to

the court, and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the October 26, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 23.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Objection to Claimed Exemptions is sustained, and the exemptions claimed on Schedule C are disallowed in their entirety.

The trustee filed this Objection to the debtor's claimed exemption on the basis that the debtor is using both California Code of Civil Procedure sections 703.140, et seq., and 704.010, et seq., which are mutually exclusive.

The trustee's argument is well-taken. It is black-letter law that the California exemption statute allows a debtor in bankruptcy to elect between two sets of exemptions, but not utilize both sets. Cal. Code Civ. P. § 703.140(a) (1); *In re Reaves*, 285 F.3d 1152, 1155 (9th Cir. 2002).

The trustee's Objection is sustained, and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by the Chapter 13 trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions on Schedule C are disallowed in their entirety.

5. [21-22614](#)-C-13 HENRY REED
[GAL](#)-1 Jason Vogelpohl

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
8-30-21 [[23](#)]

TRANSPORTATION ALLIANCE
BANK, INC. VS.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 29.

The Motion for Relief from the Automatic Stay is xxxxxx.

Creditor Transportation Alliance Bank, Inc. d/b/a/ TAB Bank ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2016 Volvo VNL64T780 Tractor (the "Property")

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is not insuring the Property. Declaration, Dkt. 25. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$129,301.11, exceeds the value of the Property, which is \$55,000.00. *Id.*

DEBTOR'S OPPOSITION

The debtor filed an Opposition on August 30, 2021. Dkt. 30. The debtor represents that he is attempting to get the Property insured, and argues that the Property is necessary for an effective reorganization because he is a self-employed truck driver.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Creditor Transportation Alliance Bank, Inc. d/b/a/ TAB Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is xxxxxxxxxxxxxxxx

No tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 53 days' notice was provided. Dkt. 80.

The Motion to Modify Plan is XXXX

The debtor filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 78) filed on May 21, 2021.

The trustee filed an Opposition on June 14, 2021, arguing the plan is not feasible because the plan payment is insufficient in months 9 through 36, and because the plan relies on a permanent loan modification which has yet to be executed and approved by the court. Dkt. 84.

The debtor filed a Response on June 21, 2021, providing a detailed mathematical analysis showing that the proposed \$202.85 payment in months 9 through 36 is sufficient. Dkt. 87. The Response also concedes that the plan relies on a permanent loan modification, and requests the hearing on this Motion be continued to September.

TRUSTEE'S SUPPLEMENTAL REPLY

The trustee filed a Supplemental Reply on June 23, 2021. Dkt. 90. The Supplemental Reply argues that the debtor's analysis understates the unsecured claim total due to a duplicative claim filed by the IRS, and mistakenly represents that the IRS' priority claim of \$1,516.82 has already been paid. The trustee reasserts that the plan payment is insufficient, but agrees with a continuance of the hearing on this Motion to September to allow the debtor to obtain the permanent loan modification.

DEBTOR'S SUPPLEMENTAL RESPONSE

The debtor filed a Response on September 22, 2021. Dkt. 107. The Response argues that Proof of Claim Nos. 5 and 6 are duplicative of each other, that Proof of Claim No. 5 should not be considered, and that Proof of Claim No. 6-2 filed by the IRS no longer asserts the \$1,516.82 priority claim.

DISCUSSION

During the prior hearing, the debtor requested a continuance to allow negotiations with the IRS regarding the amendment of its duplicate proof of claim.

Thereafter, on October 20, 2021, the IRS filed a Notice of Withdrawal of Proof of Claim, No. 5-1.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Stacie Renae Pradie, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxxxxx

Final Ruling: No appearance at the October 26, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 52.

**The hearing on the Motion to Confirm is continued to
November 9, 2021, at 1:30 p.m.**

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 51) filed on June 29, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 61) on July 19, 2021, opposing confirmation on the following grounds:

1. The plan treats the claim of Rocky Top Rentals, LLC, as a Class 2. However, that creditor's POC, no. 7, indicates the claim is unsecured.
2. The debtor's plan is a sixty-month plan and the average monthly dividend proposed for the Class 2 claim of Ford Motor Credit Company will take 60 months to pay said claim. As disbursements are not set to commence until month 4, debtor's plan is not feasible.

DEBTOR'S REPLY

The debtor filed a Reply agreeing with the trustee's arguments. The debtor represents that Rocky Top Rentals, LLC, is being contacted to see if the creditor will amended its claim. If that creditor does not do so, the debtor acknowledges that the dividend to unsecured will be increased.

The debtor further recommends the order confirming plan address the start date to payments on Ford Motor Credit Company's claim.

DEBTOR'S SUPPLEMENTAL REPLY

The debtor filed a Supplemental Reply on September 7, 2021. Dkt. 79. The Supplemental Reply reiterates the debtor's past argument that the claim filed by Rocky Top Rentals, LLC, is inaccurate. But, no Objection to Claim has been filed.

DISCUSSION

The hearing on the Motion to Confirm is continued to November 9, 2021, at 1:30 p.m. to be heard alongside the debtor's Objection to Claim and Rocky Top Rentals, LLC's Motion For Relief.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Ron Lee Colla, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that hearing on the Motion to Confirm is continued to November 9, 2021, at 1:30 pm.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 44.

The Motion to Incur Debt is granted.

The debtor filed this Motion seeking authority to incur debt to refinance the debtor's residence located at 732 Aparicio Way, Galt, California; and to take out \$24,674.00 in cash to cover home repairs, medical expenses, and education expenses for the debtor's son.

The plan presently provides for the debtor's mortgage as a Class 4, paid at \$2,855 per month at 3.25% interest. The proposed financing is in the principal amount of \$498,417.00, paid at 2.75% interest over 30 years. The proposed payment is \$2,921.00 per month for 11 years, and \$2,604.00 per month thereafter.

TRUSTEE'S RESPONSE

The Trustee filed a Response noting that no estimated closing statement has been filed in support of the Motion, and requesting that if the Motion is granted certain language be added to the order.

DISCUSSION

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Victor Jesus Topete having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

9. [19-26859](#)-C-13 JENNIFER/DAVID KALINEN OBJECTION TO CLAIM OF CHECK
[RDG](#)-3 Stephen Reynolds INTO CASH, CLAIM NUMBER 12
9-17-21 [[92](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 39 days' notice was provided. Dkt. 94.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 12, filed by Check Into Cash was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is January 10, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 33. The Proof of Claim subject to this Objection was filed August 2, 2021.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12 of Check Into Cash is sustained, and the claim is disallowed in its entirety.

10. [20-24264](#)-C-13 JUAN LOPEZ AND ROSALINA OBJECTION TO CLAIM OF
[RDG](#)-2 MARTINEZ-MACIEL SACRAMENTO COUNTY TAX
Peter Macaluso COLLECTOR, CLAIM NUMBER 8
9-17-21 [[58](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 39 days' notice was provided. Dkt. 60.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 8, filed by the Sacramento County Tax Collector was filed late and should be disallowed.

The deadline for filing proofs of claim for governmental units in this case is March 3, 2021. Notice of Bankruptcy Filing and Deadlines, Dkt. 18. The Proof of Claim subject to this Objection was filed July 26, 2021.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 8 of Sacramento County Tax Collector is sustained, and the claim is disallowed in its entirety.

11. [19-20066](#)-C-13 HELEN WAYNE
[CYB](#)-3 Candace Brooks

CONTINUED MOTION FOR
COMPENSATION FOR CANDACE Y.
BROOKS, DEBTORS ATTORNEY(S)
9-21-21 [[37](#)]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 42.

The Motion for Allowance of Professional Fees is ~~xxxxxx~~.

Candace Y. Brooks, counsel("Applicant") for the debtor Helen Elizabeth Wayne, filed this Motion seeking approval of additional fees, beyond the flat fee, for substantial and unanticipated work performed post-confirmation.

The Motion explains the additional fees all relate to the debtor's need to purchase a new vehicle, which arose after plan confirmation. The services included significant communications with the debtor, preparation and prosecution of a motion to incur debt, preparation and prosecution of a motion to sell the debtor's old vehicle, and preparation and filing of supplemental schedules.

Exhibit A filed by counsel is an itemized billing statement. Dkt. 40.

Fees are requested for the period September 13, 2019, through September 8, 2021. The requested fees total \$4,230.00.

TRUSTEE'S OPPOSITION

The Trustee filed an Opposition on October 4, 2021. Dkt. 43. The trustee argues that if the Motion is granted, the 36-month plan will be rendered infeasible, with the proposed fees taking 20 months longer to pay off.

The trustee also notes no declaration of the debtor was filed in support of the Motion.

FEES AND COSTS & EXPENSES ALLOWED

At the hearing, ~~xxxxxxxxxxxxxxxx~~

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Candace Y. Brooks ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxxxxxxxxx~~

12. [21-22969](#)-C-13 WENDY MARTINEZ
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
10-5-21 [[17](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 20.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The IRS filed Proof of Claim, No. 7-2, asserting a \$23,949.82 secured claim that is not provided for in the plan.
2. The plan mathematically requires a payment of \$7,254.35 per month, which is greater than the proposed \$7,200 payment.

DISCUSSION

The trustee's arguments are well-taken. The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. Furthermore, with a substantial secured claim held by the IRS unaccounted for, the plan is not likely to be successful.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 15 days' notice was provided. Dkt. 14.

The Motion to Extend the Automatic Stay is granted.

The debtor Caroline Amen Obaseki ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on June 21, 2021, after Debtor fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 19-27471, Dkt. 88. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith, and that her circumstances have changed because her children are living at home and will help the debtor complete a Chapter 13 plan.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic

issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Caroline Amen Obaseki having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.